

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1378/2002

Reserved on:

Date of Decision: 23.4.2007

Naginder Singh Petitioner

-versus-

Taran Singh and others. .. Respondents.

Coram:

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting?*

For the Appellants : Mr. Bimal Gupta, Advocate.

For the Respondent No.1 : Mr. R.P. Singh, Advocate

For the respondent No.3. : Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan, Dy. A.G. and Ms. Meenakshi Sharma, Dy. A.G., Advocate.

Rajiv Sharma, J. (oral):

The present petition is directed primarily against the order passed by Financial Commissioner dated 31st December, 2001.

The bone of contention between the parties is the mutation which was attested by AC-IIInd Grade on 10th April, 1992. Mr. Bimal Gupta, Advocate appearing on behalf of the petitioner has strongly contented that the mutation has been attested by the AC-IIInd Grade on 10th April, 1992 without hearing the petitioner and similarly situate persons, who were vitally interested in the same. The learned Advocate General has submitted that the orders passed by all the authorities including the Financial Commissioner dated 31.12.2001 is in accordance with law. Mr. R.P. Singh, Advocate appearing for respondent No.1

* Whether the reporters of the Local Newspapers may be allowed to see the Judgment?

has submitted that the order 10th April, 1992 whereby the mutation has been attested is in conformity with law.

I have perused the record and heard the parties.

The reasons assigned by AC-IIInd Grade that the petitioner was aware of the date of attestation of mutation after seeking information from his office remains unsubstantiated. The AC-IIInd Grade has not mentioned any date on which the petitioner has sought information from him. Similarly, the AC-IIInd Grade has committed procedural irregularity by giving finding that the second party was intentionally absent. There was no basis for the AC-IIInd Grade to come to this conclusion. The parties were vitally interested to be heard at the time of attestation of mutation. The act of AC-IIInd Grade of not hearing the petitioner and other similarly situate persons has seriously prejudiced them. The petitioner and others were to be heard at the time of attestation of mutation i.e. 10.4.1992. Since the petitioner has not been heard at the time of attestation of mutation, the attestation dated 10.4.1992 is vitiated and liable to be set aside.

Mr. Bimal Gupta has also urged that the AC-IIInd Grade has misinterpreted the judgment of the learned District Judge, which was also upheld by this Court in Regular Second Appeal No. 456 of 1991. This Court needs not go into this aspect since the matter is required to be remitted to the AC-IIInd Grade for affording reasonable opportunity to all the parties including the petitioner at the time of the attestation of mutation. This Court is of the firm opinion that the order dated 10.4.1992 suffers from procedural irregularity and impropriety as the interested parties have not been heard during the course of attestation of mutation.

Thus the order Annexure P-6 and all consequential orders including the order passed by the Financial Commissioner dated 31.12.2001 are liable to be set aside. Accordingly the writ petition is allowed and resultantly orders Annexures P-6 dated 10.4.1992 and P-9 dated 31.12.2001 are quashed and set aside. The parties are directed to make themselves available before the AC-IIInd

Grade on 14.5.2007. The AC-IIInd Grade is directed to issue notice to all the parties including the petitioner before proceeding further in the matter. After effecting service on the petitioners and similarly situate persons, the AC-IIInd Grade is directed to proceed with the matter and decide the same within a period of two months from the date of receipt of certified copy of this judgment. It is clarified that the petitioner and similarly situate persons would make themselves positively available before the AC-IIInd Grade without fail.

The writ petition is accordingly disposed of with no order as to costs.

(Rajiv Sharma), Judge.

April 23, 2007

Awasthi